IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY FOURTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SMT JUSTICE T.MEENA KUMARI

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WRIT PETITION NO : 25184 of 1995

Between:

Chaluvadi Venkata Subbaiah S/o. Pitchaiah
R/o. Kanigiri Prakasam District

..... PETITIONER

AND

1 The Appellate Tribunal Constituted under Act.7 of 77 and Revenue Divisional Officer, Kandukur Prakasam District.
2 The Tahsildar (Mandal Revenue Officer), Kanigiri Prakasam Dist.
3 I, Satyam , S/o. Alluraiah, r/o. Dirisimancha Village Kanigiri Prakasam District

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a Writ or order or direction, more particularly one in the nature of Writ of Mandamus, declaring the judgment of the 1st respondent in D.Dis.No.9782/91 dated 30.9.1995, confirming the orders of the 2nd respondent in R.Dis.No.1500/83 dated 09.09.1983, as arbitrary, illegal and contrary to the provisions of the Act.No.7 of 77; and pass.

Counsel for the Petitioner: MR.M.RAVINDRANATH REDDY

Counsel for the Respondents No.1 & 2 : GP FOR REVENUE

Counsel for the Respondent no.3: MR. R.V. SUBBARAO

The Court made the following:

ORDER:

Seeking a direction to declare that the judgment of the 1st respondent in D.Dis.No.9782 of 1991, dated 30-09-1995, confirmed by the 2nd respondent in R.Dis.No.1500/83 dated 9-9-1983 as arbitrary and illegal, the present writ petition has been filed.

Factual scenario is almost undisputed and needs to be noted in brief:

The 3rd respondent pledged 5 items of gold jewellery with the petitioner and borrowed an amount of Rs.6,700/- on 29-9-1974 repayable with interest at 18% per annum. He made two part payments at Rs.1050/- and Rs.1510/- on 29-03-1976 and 25-12-1976 respectively. Item No.2 of the gold article was returned to him on 25-12-1976. He also pledged some land. As he is a small farmer, he is entitled to the benefits of the A.P. Agricultural Indebtedness (Relief) Act, and the debt owed to him under the pledge must be deemed to have been discharged. He filed a petition before the 2nd respondent with the aforementioned averments.

Combating the allegations made in the petition, the respondent-writ petitioner herein filed the counter wherein he admitted as to the pledging of 5 items of gold and also some extent of land. But, he denied that the 3rd respondent is a small farmer on the ground that he owned Ac.8-64 cents of dry land. But, the 2nd respondent without appreciating the facts passed the order vide proceedings R.Dis.No.1500 of 1983 dated 9-9-1983 directing him to return the four gold articles. Feeling aggrieved, he filed an appeal before the 1st respondent. The 1st respondent set aside the order passed by the 2nd

respondent dated 6-8-1984. Challenging the same, 3rd respondent filed review of the orders dated 6-8-1984 of the 1st respondent. Subsequently, the 1st respondent dismissed the said review petition vide proceedings Rc.No.7201 of 1984 dated 8-4-1985. Questioning the order of the 1st respondent dated 8-4-1985, the 3rd respondent filed a W.P.No.8000 of 1985. This Court by an order dated 1-9-1988 set aside the orders of the 1st respondent and directed the Mandal Revenue Officer, Kanigiri to give notice to both the parties and consider the matter in accordance with Law. But, the 1st respondent without appreciating the facts in right perspective, dismissed the appeal filed by the respondent-writ petitioner by proceedings dt.30-9-1995.

Having aggrieved by the order of the 1st respondent dated 30-9-1995, the present writ petition has been preferred by the respondent-writ petitioner.

Heard the learned counsel on either side.

I have perused the order impugned and the material available on record. It goes to show that this is a second round of litigation. Pursuant to the orders of this Court in W.P.8000 of 1985, the 1st respondent has passed the order impugned. A perusal of the same, it is apparent that the said order is absolutely based on the report of the Mandal Revenue Officer dated 9-9-1983. No material is placed before this Court that any oral or documentary evidence has been adduced either before the 1st respondent or the 2nd respondent. If that being the case, it is not known as to what is the basis on which the 1st respondent has arrived at the conclusion while passing the impugned order except baldly relying on the report of the 2nd respondent.

In this back ground of the matter, it is not desirable to decide the issue at this stage of the proceedings and therefore it is a fit case wherein this matter can be remanded back to the 2nd respondent to fresh disposal after affording an opportunity to both the parties, so as to adduce both oral and documentary evidence.

Accordingly, this writ petition is allowed setting aside the order impugned herein. However, the matter is remitted back to the file of the 2nd respondent.

The 2nd respondent is directed to dispose of the matter in accordance with law after giving an opportunity to both the parties so as to enable them to adduce both oral and documentary evidence. Since the matter is an outcome of the year 1983, it is desirable to direct the 2nd respondent to dispose of the matter within a period of six months from the date of receipt of a copy of this order.

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24-03-2005

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That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice, on this Thursday, the Twenty Fourth Day of March, Two Thousand and Five.

Copy to

1 The Appellate Tribunal Constituted under Act.7 of 77 and Revenue Divisional Officer, Kandukur Prakasam District.
2 The Tahsildar (Mandal Revenue Officer), Kanigiri Prakasam Dist.
3 Two CCs to GP for Revenue, High Court buildings, Hyderabad. (O.U.T.)

4 Two CD copies.